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ON PAGE A13

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AF Prosecutors Say They Have Secret Evidence in Cooke Case

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Air Force prosecutors said yesterday that they can prove all of the spy charges against 2nd Lt. Christopher M. Cooke with secret evidence that does not depend on his confession.

The startling claim raised the possibility that massively successful surveillance has been conducted of the Soviet Embassy here. Cooke is alleged to have delivered secret and top-secret documents concerning the Titan II missile to the embassy over the last year.

Cooke's lawyers, led by F. Lee Bailey, have been trying to block a court-martial on the grounds that the Air Force granted Cooke immunity in May in return for full disclosure of his activities.

Air Force Maj. Charles B. Heimburg, in a final argument concluding two weeks of pretrial hearings at Andrews Air Force Base, denied that binding assurances had been made to Cooke.

But, he said, if the court finds that "an unauthorized promise of immunity" was made, the most that should be done is to suppress evidence obtained as a result.

Even if that were done, Heimburg said, the prosecution has "overwhelming evidence of a crime, strong legal evidence of espionage."

Air Force Lt. Col. David Orser, the military judge, indicated that he would "rule early next week" on whether the court-martial should proceed.

Lt. Col. Barton L. Spillman, the chief prosecutor, and Heimburg told reporters after the session that they are satisfied that they have enough independent evidence to back the 14 counts lodged against Cooke under the Uniform

The prosecutors refused to elaborate on the matter. "I can't comment about when the evidence was obtained, or where it was obtained or how it was obtained," Spillman said. "But there's no constitutional violation [of Cooke's rights] if we don't use any of his statements or evidence obtained from that."

Spillman said the prosecutors do not intend to use any of Cooke's statements or information derived from them even if Orser rejects the defense team's immunity argument. Heimburg said information the Air Force intends to use is still classified.

Defense attorney Kenneth Fishman said the question of when the Air Force obtained its evidence is "very important."

"If evidence is obtained after a confession has been given, it is very difficult for the government to establish it comes from an independent source," Fishman told reporters. "Their claim that they don't plan to use derivative evidence is a serious issue. We will contest that strongly."

When reporters pressed the prosecutors about the importance of when the evidence was obtained, Col. John D. Williams, the public affairs officer who arranged the briefing, interrupted and demanded an end to that line of questioning.

When reporters demurred at being told what questions to ask, Williams abruptly announced that the briefing was over. He then began doing some calisthenics in the courtroom.

Cooke, 26, came under suspicion when he called his father in Richmond last Dec. 23 from the Soviet Embassy. The FBI, which routinely watches the embassy, reportedly photographed him entering the building Dec. 17, but was unable to identify him until he called home.

Even that amount of surveillance, however, seems insufficient to back charges that on Dec. 17 and again on May 2, Cooke, "having lawful access to information relating to the national defense, did willfully deliver the information to unknown representatives of the Union of Soviet Socialist Republics."

The charges include three counts of espionage and 11 of illegal contacts with Soviet diplomats, beginning with a telephone call from St. Louis on June 18, 1980, to the Soviet military mission here. Cooke reported for duty the next day at McConnell Air Force Base near Wichita, where he became deputy commander of the Titan II missile crew.

Picked up on May 5, three days after his last visit to the embassy, Cooke was questioned by agents of the Air Force Office of Special Investigations and initially denied wrongdoing.

Four days later, on behalf of Cooke's superiors in the Strategic Air Command, OSI interrogators promised him immunity from prosecution "even if you've been as deep in espionage even if you've compromised the entire missile system."

Air Force Capt. Francis W. Pedrotty, hurriedly appointed to defend Cooke, said he confirmed the immunity offer in a laborious conversation with SAC's chief legal adviser, Brig. Gen. C. Claude Teagarden, although Teagarden refused to put it in writing.

Cooke started talking that evening, admitting that he had been "photographing, copying and giving to the Soviets" secret information about the nation's strategic nuclear arsenal for about a year.